

REMARKS

In the present Office Action, prepared in response to the Amendment filed by Applicants on January 13, 2006, it is noted that all rejections based on WIPO 99/17943 have been dropped, as apparently, the rejection based on WIPO 99/17943 has been determined to be no longer relevant or applicable to the pending claims.

35 U.S.C. § 103

Europe 890 456

Claims 1, 5, 10-12, 15-16 and 19-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Europe 456 (EP 890456) in view of at least one of Japan 207 (JP 6-135207), Cesarini et al. (WO 00/30874) and Iwamura et al. (US 6109317). This rejection is respectfully traversed for the following reasons.

EP '456 is applied herein in the manner almost identical to the manner in which it was applied in the first Office Action of October 14, 2005. As multiple secondary references are used herein this Rejection as being applied identical to the first Office Action, and have already been argued by Applicant, all previous arguments regarding EP 456, Japan 207, and Iwamura as set forth in the January 13, 2006 Amendment are incorporated herein by reference.

In the pending Office Action, it is being argued that it would have been obvious to provide EP '456 with a *footprint* having a length such that the disclosed blocks (4) have a length in the recited range because a) EP '456 teaches blocks having a "relatively large circumferential component"; b) the circumferential length of the blocks is longer than the circumferential length of the groove forming the block; and c) EP '456 desires more grooves in the shoulder regions than the central region. Again, the unwritten presumption is that if the grooves of EP '456 were modified to have a greater length, the blocks would then have a length within Applicants recited range.

To compensate for the acknowledge lack of teaching of the critical feature of Applicant's claim, the relationship between the circumferential length L of the tetragon shaped block and the tread footprint length L_F , three references are applied alternatively and collectively for their teachings. Each reference is cited as providing a tire for use on wet roads; this presumably being the motivation that would compel one skilled in the art at the time of the invention to combine the teachings of each secondary reference with EP '456.

Japan 207, as illustrated in Figure 1, is noted as teaching steep slanted grooves 26 having a length greater than the footprint length. Japan 207 provides no specific teaching as why the groove 26 must have a length greater than the footprint length. And Japan 207 certainly does not teach forming a single block having a length greater than the tire footprint length. Regarding the asserted motivation of use on wet roads to combine the teachings of Japan 207 with EP '456, Japan '207 teaches improved water drainage is achieved by inclining the blocks edges 23L and 24L – not by the length or the inclination angle of the major groove 26.

As previously argued in response to this same combination of references, the groove length of Japan '207 is also a factor of the width of the center rib block group, the center rib block forming the center 53% of the tread. EP 456 teaches that the tread center has a maximum width of 45% of the tread width. To combine the teachings of Japan 207 to EP 456, one would have to increase the width of the tread center section of EP 456, but this is contrary to teachings of EP 456. One might also have to increase the spacing between the grooves of EP 456, but this is also contrary to the explicit teachings of EP 456 who desires a spacing of only one steeply slanted groove to every two gently slanted grooves. Thus to attempt to combine any additional teachings regarding the groove configuration to EP 456, based upon the teachings of Japan 207, would all be contrary to the teachings of EP 456 – thus there is no motivation to combine these references and no reasonable expectation of success.

Cesarini is cited for a teaching of forming the central grooves having a length greater than the footprint length of the tire, the taught length to “allow the flowing out of the water contained in the closed portion of the groove” (pg 15, lines 20-27). The primary reason that Cesarini must have a *groove* with such a length is that Cesarini specifically teaches that the tread should have NO circumferential grooves therein, nor should any of the grooves in the tread communicate with each other (pg 7, lines 20-22; pg 6, lines 2-6) – thus there is no other way for water to be evacuated from the footprint of Cesarini. Furthermore, Cesarini specifically teaches the elimination of all “isolated blocks” in the tread (pg 6, lines 6-10).

To establish *prima facie* obviousness, there 1) must be some suggestion or motivation in the art to modify or combine the EP '456 and Cesarini; 2) must be a reasonable expectation of success from the combination of EP '456 and Cesarini and 3) the combined references must teach or suggest all the claim limitations. Graham v. Deere

Despite EP 456's desire to have a tire “for use on wet roads,” one skilled in the art would readily appreciate that any teachings of Cesarini regarding having *grooves* longer than

the footprint are not applicable to the tread of EP 456. The tread of EP 456 is replete with isolated blocks separated by circumferentially extending grooves that facilitate the removal of water from the footprint. Thus there is no need for one skilled in the art to look to the teachings of Cesarini regarding the *groove* length; i.e. there is absolutely no motivation to combine the teachings as EP 456 already has means via the circumferential grooves that communicate with the lateral grooves to move water out of the footprint.

Additionally, the combined teaches of EP '456 and Cesarini fails to teach or suggest all the claimed limitations, even if such teachings were combinable for the reasons alluded to in the rejection. Cesarini fails to teach forming blocks having a length greater than the footprint length. And as Cesarini teaches against forming any isolated blocks in the tread, it is highly unlikely that one skilled in the art would achieve Applicants recited tire by a combination of EP '456 and Cesarini.

As noted above, the majority of the teachings of Cesarini are specifically contrary to the disclosed tread of EP '456. The courts have held that "as a 'useful general rule,' that references that teach away cannot serve to create a *prima facie* case of obviousness. In re Gurley, 27 F.3d 551, 553, 31 U.S.P.Q. 1131, 1132 (Fed. Cir. 1994). Cesarini clearly teaches away from the entire tread design of EP '456. Cesarini is not applicable art to the tire of EP '456 and should be withdrawn as prior art in any rejection that combines it with EP '456.

Regarding Iwamura, again Figure 3 is cited as providing grooves exceeding the footprint length. Iwamura specifically teaches that the grooves 2 are arranged "such that at least five, preferably six or more main grooves 2 always appear in the ground contact patch during running" (emphasis added; col 5, lines 31-35). Thus, in applying Iwamura's contact patch teachings to the tread of EP 456, the grooves of EP 456 would have to be more closely spaced, likely negating the teachings of EP 456 that the center blocks (4) must have a length greater than the shoulder blocks (5), and failing to result a tread in having each block in the tread row with a circumferential length greater than the footprint length as recited in the present application.

Furthermore, there are no blocks in the central region of the tire of Iwamura. The circumferentially adjacent tread elements of Iwamura are connected to one another and do not form independent blocks such as those disclosed by EP 456 or as recited by Applicant. Thus, similar to Cesarini, it may be likely that the groove length is required to evacuate water as there is limited other means of water evacuation. But this is not the case with the tread of EP '456 which teaches the formation of isolated blocks having interconnecting means to move water from the footprint. Again, there are opposing teachings in the references

regarding the groove and center tread structure and there is a lack of suggestion or motivation in either reference to modify or combine the references. Thus the rejection of the claim 1 of EP 456 as modified by Iwamura fails to establish *prima facie* obviousness under the Graham v. Deere standards.

In the rejection, different elements of Japan 207, Cesarini et al, and Iwamura are cherry-picked to cite as alleged reasons to modify the tire tread of EP '456, all presumably to provide a tire for use on wet roads. No analysis of the Graham v. Deere *prima facie* obviousness requirements is even attempted other than an assertion regarding having a tire that will be used on wet roads. Every tire designer knows that a tire will be used on a wet road at some point in the life of the tire, except with maybe the exclusion of slick tread tires designed for NASCAR and Formula 1 type racing (but it should be noted that even some slicks are provided with hand carved grooves to provide some drainage if required to operate in wet track conditions) – thus all tires are provided with some form of grooving to deal with water evacuation. Simply because Japan 207, Cesarini et al, and Iwamura all are directed to tires for use on wet roads is not sufficient motivation to combine the teachings of each, either individually or collectively, with EP '456.

All of the references, alone and in any combination thereof, fail to teach or appreciate the formation of single isolated blocks having a circumferential length greater than the footprint length of the tire.

With regard to the rejected dependant claims, claims 5, 10-12, 15-20, as the dependant claims incorporate the subject matter of claim 1, and the rejection fails to establish *prima facie* obviousness for claim 1, any rejection of the dependent claims based on EP 456 as modified herein also fails. Applicant does not concede the obviousness of any not specifically argued dependent claim.

Japan 11-5413

Claims 1, 5-7, 11-12, 15-16, 20 and 21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 413 (JP 11-5413) in view of at least one of Japan 207, Cesarini et al. and Iwamura et al. This rejection is respectfully traversed for the following reasons.

Japan 413 is applied herein in the manner almost identical to the manner in which it was applied in the first Office Action of October 14, 2005. As multiple secondary references are used herein this Rejection as being applied identical to the first Office Action, and have

already been argued by Applicant, all previous arguments regarding Japan 413, Japan 207, and Iwamura as set forth in the January 13, 2006 Amendment are incorporated herein by reference.

It is being argued that it would have been obvious to provide Japan 413 with a footprint having a length such that the disclosed blocks have a length in the recited range because Japan '413 teaches a tire for use on wet roads wherein a) the tetragon blocks have a length greater than the shoulder blocks, b) the circumferential length of the blocks is longer than the circumferential length of the central slant grooves that forming each block; and c) Japan '413 desires more grooves in the shoulder regions than the central region. Again, the unwritten presumption is that if the grooves of Japan 413 were modified to have a greater length, the blocks would then have a length within Applicants recited range.

The secondary references of Japan '207, Cesarini, and Iwamura are applied in the identical manner as applied in the preceding rejection.

Japan 207 does not teach any desired relationship between a single block length and the footprint length as recited by Applicant. Japan also teaches that the improved water drainage is achieved by inclining the edges 23L and 24L – not by the length or the inclination angle of the major groove 26.

To establish *prima facie* obviousness, there must be motivation to combine the references and a reasonable expectation of success. Japan 207 teaches that the slant grooves extend continuously from one tread side to the opposing tread side in a single tread row; unlike Japan 413 wherein there are two adjacent tread rows of blocks and the slant grooves of the two tread rows are *not* aligned and thus do not extend continuously from one tread side to the other tread side. Do to the different tread structures, one skilled in the art would not look to combine these teachings; this is especially so, as contrary to the rejection, Japan 207 provides no reasoning for the length of the grooves. Even where one motivated to attempt to combine any teachings of Japan 207 to Japan 413, it is uncertain that each individual block in each row would have a length greater than the footprint length – one skilled in the art is more likely to align the grooves in Japan 413 – and this does not inherently result in each tetragonal shaped block having the length recited in claims 1 and 20 – especially as Japan 207 does not teach that the blocks in the tread row must have such a length.

Cesarini is applied herein in a manner identical to that in the preceding rejection. Cesarini is cited for a teaching of forming the central grooves having a length greater than the footprint length of the tire, the taught length to “allow the flowing out of the water contained in the closed portion of the groove” (pg 15, lines 20-27). Cesarini also specifically teaches

that the tread should have NO circumferential grooves therein, nor should any of the grooves in the tread communicate with each other to prevent the creation of any “isolated blocks” (pg 7, lines 20-22; pg 6, lines 2-10) – thus there is no other way for water to be evacuated from the footprint of Cesarini.

Contrary to the teachings of Cesarini, Japan 413 is formed solely by isolated blocks defined by circumferential grooves, providing multiple outlets for water evacuation from a footprint. Thus there is no need for one skilled in the art to look to the teachings of Cesarini regarding the *groove* length; i.e. there is absolutely no motivation to combine the teachings as Japan 413 already has means via the circumferential grooves that communicate with the lateral grooves to move water out of the footprint.

Additionally, the combined teaches of Japan 413 and Cesarini fails to teach or suggest all the claimed limitations, even if such teachings were combinable for the reasons alluded to in the rejection. Cesarini fails to teach forming blocks having a length greater than the footprint length. And as Cesarini teaches against forming any isolated blocks in the tread, it is highly unlikely that one skilled in the art would achieve Applicants recited tire by a combination of Japan 413 and Cesarini.

Similar to EP 456 and Cesarini, Japan 413 and Cesarini are references that teach away from each other. Japan 413 teaches forming circumferential grooves and blocks while Cesarini teaches no isolated blocks and no circumferential grooves. Thus, per the Court’s holding, these references cannot serve to establish *prima facie* obviousness.

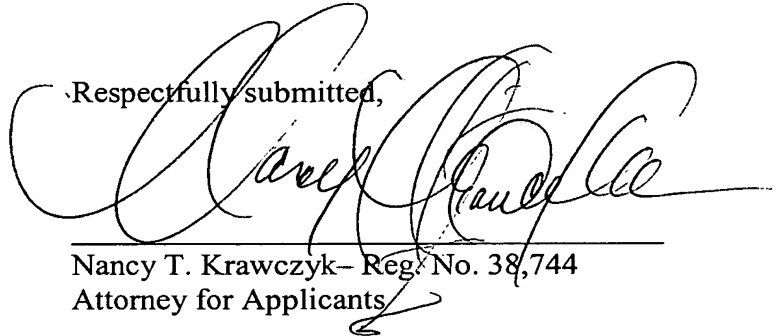
Iwamura specifically teaches that the grooves 2 are arranged “such that at least five, preferably six or more main grooves 2 always appear in the ground contact patch during running” (emphasis added; col 5, lines 31-35) and Iwamura is silent as to an exact reason for this specific requirement. To achieve the teachings of at least six or more central grooves in the tread footprint of Japan 413, the grooves of Japan 413 would have to be more closely spaced, likely negating the teachings of Japan 413 that the center blocks 8 must have a length at least twice the length of the shoulder blocks, and failing to result a tread in having each block in the tread row with a circumferential length greater than the footprint length as recited in the present application.

All of the references, alone and in any combination thereof, fail to teach or appreciate the formation of single isolated blocks having a circumferential length greater than the footprint length of the tire.

With regard to the rejected dependant claims, claims 2-9, 11-16, 18, and 20-21, as the dependant claims incorporate the subject matter of claim 1, and the rejection fails to establish *prima facie* obviousness for claim 1, any rejection of the dependent claims based on Japan 413 as modified herein also fails. Applicant does not concede the obviousness of any not specifically argued dependent claim

Applicant believes all of the pending claims in the subject patent application are allowable. Thus, the Examiner is respectfully requested to allow all pending claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy T. Krawczyk", is written over a horizontal line. The signature is fluid and cursive.

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